

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5482 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAFARKHAN @ SAFI CHIMANIKHAN PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MR. PRAJAPATI FOR MR MM TIRMIZI for Petitioner

MR. NIGAM SHUKLA, Addl. G.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 22.5.1996 passed by the Police Commissioner, Ahmedabad City whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. The detention order was executed on 22.5.1996 and since then the petitioner is under detention lodged at Bhuj Jail, Bhuj.

This Special Civil Application was filed on 24.7.1996 and rule returnable for 19.8.1996 was issued on 26.7.1996. But so far neither any reply has been filed nor any affidavit of the detaining authority has been filed.

The grounds of detention enclosed with the detention order show that 3 criminal cases for the offences under the I.P.C. under Chapter XVI and XVII were registered against the petitioner. The petitioner has been using deadly weapons and is engaged in criminal activities. Besides this, the detaining authority has taken into consideration the statements made by certain witnesses against the petitioner's criminal activities with regard to the incidents on 4.5.1996 and 12.5.1996. The petitioner has been found to be headstrong and dangerous person and has been detained as such.

The detention order has been challenged on more than one grounds. At the time of arguments the learned counsel has submitted that the allegations and material relied upon by the detaining authority did not constitute a case of breach of public order.

The law laid down by the Supreme Court in the case of MUSTAKMIYA JABBARMIYA SHAIKH VS. M.M. MEHTA, COMMISSIONER OF POLICE reported in 1995(2) G.L.R. 1268 applies with full force to the facts of the present case and it is clear that no case of breach of public order is made out. It is at the most a case of breach of law and order. The detention order deserves to be set aside on this ground alone.

Accordingly, the Special Civil Application is allowed and the impugned detention order dated 22.5.1996 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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